

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

WALTCO TRUCK EQUIPMENT COMPANY

Employer

and

Case No. 8-AC-135

**TRUCK DRIVERS LOCAL UNION NO. 348, AFFILIATED WITH
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO¹**

Petitioner

DECISION AND ORDER AMENDING CERTIFICATION

The Petitioner, a Teamsters local, seeks to amend the current Certification of Representative for the above Employer's employees to reflect that the Petitioner is now the certified bargaining agent, due to its merger with the currently certified bargaining agent, another Teamsters local, with the Petitioner. Based upon the entire record in this case, I find that no question concerning representation has been raised in this matter, and I shall amend the certification as requested.²

Background Facts and the Positions of the Parties

On December 21, 1972, the Regional Director issued a Certification of Representative to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 497, for a production and maintenance unit of the Employer's employees.³

¹ Board Exhibit 1(a), the Petition, dated February 4, 2002, indicates that the Petitioner in this matter is "Truck Drivers Local Union No. 348, affiliated with International Brotherhood of Teamsters, AFL-CIO." Accordingly, I correct the inadvertent error on the cover of the transcript referring to the Petitioner as "International Brotherhood of Teamsters Local Number 497".

² The Board has delegated its powers in connection with this case to me as Regional Director, pursuant to Section 3(b) of the Act. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

The parties signed a series of successive collective bargaining agreements, the most recent of which was effective by its terms from December 1, 1997 through November 30, 2000. On February 7, 2002, the Petitioner, Local 348, filed the instant Petition seeking, as stated above, to amend the Certification to reflect that the Petitioner is now the certified bargaining agent, because Local 497 was merged into the Petitioner.

At the hearing held in this matter, the Employer took the position that it “did not object” to either the merger or the granting of the amendment to the Certification, but that it wanted to “leave the decision to the Board”. The Petitioner took the position that the amendment should be granted because the Board’s standards for amendment of certification based on merger have been met. Local 497 did not appear at the hearing. Both the Employer and the Petitioner waived filing briefs.

Applicable Law

The Petitioner correctly asserts that the Board requires that two conditions be satisfied before granting a petition for an amendment of certification based on affiliation or merger: first, that the merger election itself satisfies minimum due process standards. Second, that there is substantial continuity between the pre- and post-affiliation representation. NLRB v. Financial Institution Employees of America, Local 1182, 475 U.S. 192, 199 (1986). See also Seattle-First National Bank, 290 NLRB 571 (1988); Hammond Publishers, Inc., 286 NLRB 49, 50 (1987). I find that the merger herein meets both these conditions.

Minimum Due Process

³ The December 21, 1992 Certification of Representative describes the unit as follows: “All production and maintenance employees employed at the Employer’s Tallmadge, Ohio plant, but excluding all office clerical employees, and all professional employees, guards and supervisors as defined in the Act.”

Minimum due process standards regarding a merger are satisfied if members are given notice of the merger election, as well as an opportunity to discuss the merger, and the secrecy of the ballot is preserved. May Department Stores Company 289 NLRB 661, 665 (1988); Hammond, supra at 51.

The record reflects the following. On August 9, 2001, Local 497's Executive Board met with Local 348's Secretary-Treasurer and Business Manager Patrick Darrow to discuss a merger. Darrow testified that at the meeting Local 497's Executive Board unanimously agreed to have Local 497's members vote on a merger with Local 348. On September 12, 2001, all of Local 497's members received a letter signed by the Executive Board recommending a merger with Local 348.

On September 13, 2001, all of Local 497's members were sent two letters: one from Darrow, outlining what he considered to be the benefits of merger; and one from Local 497's Secretary-Treasurer Curtis Daniels, announcing a meeting on September 20, 2001 to discuss the merger. At that meeting, both Darrow and Daniels discussed the proposed merger and fielded questions from Local 348's members.

The record further reflects that ballots and an explanatory letter were mailed to Local 497's members at their homes. The ballots came with two envelopes, an inner one marked "secret ballot envelope" in which to place the executed ballot, and an outer one in which to return mail, the ballot and inner envelope. The explanatory letter advised members that ballots had to be postmarked by October 8, 2001 in order to be counted, and that they could attend the count on October 10, 2001 at 1:00 pm at Local 497's union hall. The return ballots were mailed to a post office box.

Teamsters International Representative Roger Insprucker oversaw the election. He and other Local 497 and Local 348 officers, including Darrow, picked up the ballots from the post office box and brought them to the union hall for counting. Each voter's eligibility was verified from Local 497's records by means of examining the outer envelope, then the outer envelopes were discarded and the inner envelopes containing the ballots were mixed to assure anonymity. The votes were counted, and the majority of Local 497's members voted for the merger, 273-53. The results of the vote were posted at the Employer's facility. The merger was then approved both by Local 348's Executive Board, and by officials of the Teamsters International.

Based on the above, I find that the merger process met the Board's minimum due process standards. Local 497's members were amply advised of the merger proposal and election, and were given the opportunity to review and discuss it. The secrecy of the voting process was maintained. The majority of the members voted for the merger, which became effective on December 31, 2001. See CPS Chemical Company, Inc. 324 NLRB 1018, 1012 (1997).

Continuity of Representation

The Board's standard regarding substantial continuity between the pre- and post-affiliation representation is satisfied if the merger has not "substantially changed" the union. A question concerning representation requiring a new election is not raised unless the changes in the union are "sufficiently dramatic" to alter the union's identity. Financial Institution, *supra* at 199, 206; Western Commercial Transport, Inc. 288 NLRB 214 (1988). To make this determination, the Board examines the totality of the circumstances, and makes a factual comparison between the pre-and post-merger representation. CPS, *supra* at 1021; News/Sun-Sentinel Company, 290 NLRB 1171, 1177 (1988); Seattle-First National, *supra* at 571.

The record reflects the following. Prior to the merger, both Local 497 and Local 348 were subject to the International Brotherhood of Teamsters Constitution, were affiliated with Teamsters Joint Counsel 41, and were a part of the Central States Southeast/Southwest pension plans. Both locals were located in Akron, Ohio. Dues for both locals were set by the International Constitution, subject to minor local assessments. By-laws for both locals were based on the model by-laws set up by the International Union. Collective bargaining agreements negotiated by both Locals required ratification by their members. Strikes called by both Locals required authorization by their members.

After the merger, Local 497 ceased to exist, and all of its files, tangible items, and assets became the Petitioner's property. All of Local 497's members became the Petitioner's members, without any initiation or transfer fees. The Local 497 health and welfare fund continues to exist, (it is a separate legal entity from Local 497), and thus the health benefits for the members covered by it did not change. The pension benefits for those covered by the Central States plan did not change. Depending on the contract, some of Local 497's members were covered by Employer health and welfare and pension plans. These also did not change after the merger.

Two members of Local 497's executive board have been hired by Petitioner. Daniels, formerly Local 497's principal officer (secretary/treasurer) and sole business agent, was hired as a business agent. Sharon Chalfant, formerly Local 497's recording secretary and office secretary, was hired as a part-time secretary. Since the merger, the parties have had one bargaining session regarding a new contract, which Daniels, Darrow, and another business agent attended.

Based on the above, I find that continuity of representation for the Employer's employees has not substantially changed with the merger of these two Teamsters locals. The employees are

still covered by the same internal procedures that the International Teamsters Union imposes on all its locals, and with which they are familiar. Employees' dues continue to be based on the same International Teamsters standards. Their health and welfare and pension benefits remain the same and they continue to be represented by some of the same officers, including the person who was their sole business agent, for purposes of collective bargaining and contract administration.

Conclusion

Based on the above, I find that the merger of Local 497 with the Petitioner meets the Board's minimum due process and substantial continuity of representation standards necessary to grant an amendment of certification based on the merger. See News/Sun-Sentinel, supra at 1177, regarding the merger of two local of the same international union. Accordingly, I find that no question concerning representation has been raised regarding the Employer's employees, and I shall amend the certification as requested.

ORDER

I HEREBY ORDER that the Certification of Representative issued on December 21, 1972, in Case No. 8-RC-8848 be, and hereby is, amended to show Truck Drivers Local Union No. 348, affiliated with International Brotherhood of Teamsters, AFL-CIO, as the certified bargaining representative for:

All production and maintenance employees employed at the Employer's Tallmadge, Ohio plant, but excluding all office clerical employees, and all professional employees, guards and supervisors as defined in the Act.⁴

Dated at Cleveland, Ohio this 27th day of March, 2002.⁵

⁴ This Order does not constitute a recertification of representative.

⁵ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1717 Pennsylvania Avenue, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by April 10, 2002.

385-2500

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8